

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN FULTON,	)	Case No. 20-cv-3118
)	
Plaintiff,	)	Hon. Joan H. Lefkow
	)	District Judge
v.)	
	)	Hon. Maria Valdez
ROBERT BARTIK, et al.,	)	Magistrate Judge
)	
Defendants.	)	JURY TRIAL DEMANDED

ANTHONY MITCHELL,	)	Case No. 20-cv-3119
)	
Plaintiff,	)	Hon. Joan H. Lefkow
	)	District Judge
v.)	
	)	Hon. Maria Valdez
ROBERT BARTIK, et al.,	)	Magistrate Judge
)	
Defendants.	)	JURY TRIAL DEMANDED

**INDIVIDUAL CITY DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ CLAIMS
AGAINST DEFENDANT LEONARD ROLSTON PURSUANT TO FRCP 25(a)(1)**

Defendants Robert Bartik, John Zalatoris, James Breen, Edward Winstead, Joseph Struck, Leonard Rolston, Stephen Franko, and Robert Girardi (“Individual City Defendants”), by and through their undersigned counsel, hereby move to dismiss Plaintiffs’ claims against deceased Defendant Leonard Rolston pursuant to Federal Rule of Civil Procedure 25(a)(1), and state as follows:

1. On November 13, 2023, Individual City Defendants filed a Notice of Suggestion of Death pursuant to Federal Rule of Civil Procedure 25 informing the Court and the parties that Defendant Leonard Rolston died on July 31, 2023. *Fulton v. Bartik, et al.*, Case No. 20-cv-3118, Dkt. No. 235; *Mitchell v. Bartik, et al.*, Case No. 20-cv-3119, Dkt. No. 239.

2. Federal Rule of Civil Procedure 25(a) provides: “If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made

by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1).

3. Plaintiffs were electronically served with the notice of suggestion of Defendant Rolston's death on November 13, 2023. *Fulton*, Dkt. No. 235; *Mitchell*, Dkt. No. 239.

4. Accordingly, Plaintiffs were required to move to substitute a new party for Defendant Rolston on or by February 13, 2024. To date, Plaintiffs have not filed a motion to substitute a new party.

5. Therefore, the 90-day deadline for filing a motion for substitution on account of Defendant Rolston's death has expired. Plaintiffs also did not request an extension of the 90-day deadline within the 90 days to substitute a new party for Defendant Rolston.

6. Consequently, pursuant to Rule 25(a)(1), Defendant Rolston must be dismissed from this action with prejudice. *See Soulier v. Swan*, 22-cv-3-wmc, 2024 WL 195897, at *3 (W.D. Wis. Jan. 18, 2024) (granting defendant's motion to dismiss for plaintiff's failure to timely file a motion for substitution); *Russell v. City of Milwaukee*, 338 F.3d 662, 665-68 (7th Cir. 2003) (dismissing action when plaintiff failed to file motion for substitution within 90 days of service of suggestion of death).

7. On August 7, 2024, Counsel for Individual City Defendants contacted Plaintiffs' counsel via email regarding any objection to this motion, and Plaintiffs' counsel did not respond.

WHEREFORE, Individual City Defendants respectfully request this Honorable Court grant their Motion to Dismiss Plaintiffs' Claims Against Defendant Leonard Rolston Pursuant to FRCP 25(a)(1), and for any other relief this Court deems equitable and just.

Dated: August 12, 2024

Respectfully submitted,

/s/ Natalie Y. Adeeyo

Shneur Nathan (snathan@nklawllp.com)

Avi Kamionski (akamionski@nklawllp.com)

Natalie Adeeyo (nadeeyo@nklawllp.com)

Breana Brill (bbrill@nklawllp.com)

Special Assistants Corporation Counsel

Nathan & Kamionski LLP
33 West Monroe, Suite 1830
Chicago, IL 60603
(312) 957-6639

Attorneys for Individual City Defendants

CERTIFICATE OF SERVICE

I, Natalie Adeeyo, an attorney, hereby certify that on August 12, 2024, I caused the foregoing document to be filed with the Court's CM/ECF system, which provided electronic notice and a copy of the same to all counsel of record.

/s/ Natalie Y. Adeeyo